

DEQ Small Renewable Solar Energy Projects Permit by Rule Regulation (9VAC15-60)
Regulatory Advisory Panel (RAP) Meeting
June 29, 2010 Meeting
Draft Meeting Notes

Location: DEQ Central Office - 2nd Floor Meeting Rooms B & C

Start: 9:40 A.M.

End: 4:10 P.M.

RAP Leader: Carol Wampler, DEQ – RAP Leader

Recorder: Bill Norris, DEQ

Research Intern: Jennifer Perkins, DEQ

Members Present:

- Emil Avram – Dominion
(Alternate for Bob Bisha)
- John Daniel – Troutman
Sanders/Invenergy
- Ray Fernald - DGIF
- John Hart – AEC Idom
- Ron Jenkins – VDOF
- Larry Jackson – Appalachian
Power
- Debra Jacobson - George
Washington University Solar
Institute
- Julie Langan – VDHR
- Larry Lombardi – City of
Norfolk
- Rob Marmet – PEC (Alternate
for Dan Holmes)
- Robert Meyers –
Northampton County/Exmore
- Larry Nichols – VDACS
(Alternate for Stephen
Versen)
- Danette Poole – DCR
(Alternate for Tom Smith)
- Jeff Ryan - Solar Services
(Alternate for Richard Good)
- Scott Sklar – The Stella
Group
- Cathy Snyder – Lockheed
Martin
- Tony Watkinson – VMRC
- Rick Weeks – DEQ

Members Absent:

- Bob Bisha – Dominion
- James Golden – DEQ
- Richard Good – Solar
Services
- Dan Holmes – PEC
- Ken Jurman - DMME
- Larry Land - VACO
- Nikki Rovner - TNC
- Tom Smith – DCR
- Richard Street –
Spotsylvania
County/Fredericksburg
- Stephen Versen - VDACS

Guests/Speakers:

Maureen Matsen – Deputy Secretary of Natural Resources and Senior Advisor for
Energy to the Governor
David Paylor, DEQ Director

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Public Attendees:

- Tom Fitzgerald – Lockheed Martin
- Eric Hurlocker – Williams Mullen
- Rene' Hypes – DCR-DNM
- Mitch King – Old Mill Power Company
- Kim Lanterman - Dominion
- Jason Leuck – Lockheed Martin (Alternate for Cathy Snyder)
- Dula Shehab - Dominion

Carol Wampler, RAP Leader, welcomed all of the RAP members and members of the interested public to the first meeting of the Solar Energy Regulatory Advisory Panel (RAP) and thanked them for their interest in this important regulatory action. She summarized the progress to date on the Wind Energy RAP and noted that the product of those discussions and recommendations were now open for public comment. She noted that the other regulatory advisory panel activities involving Coastal and Off-shore Wind Energy would ultimately be incorporated into the current Wind Energy Permit-by-Rule efforts.

She noted that the subject matter of this RAP's discussions, Small Renewable Solar Energy, is part of a separate rule making process and would result in a separate Permit-by-Rule. It is anticipated that the discussions and deliberations of this RAP will be less controversial than those of the Wind Energy RAP. Utilizing the expertise of the members of the RAP should result in balanced approach to addressing the topic of small renewable solar energy projects.

She asked that the RAP members to introduce themselves and provide a brief background statement.

Items of Note During these discussions:

- DEQ will consult with other agencies in the Natural Resources Secretariat and other "Sister" agencies when appropriate to get a perspective on various resources. The Department of Forestry, the Department of Mines, Minerals and Energy and the Virginia Department of Agriculture and Consumer Services, while not agencies within the Natural Resources Secretariat, are an important part of this regulatory action and therefore have been asked to serve on the committee.
- The question that needs to be answered at today's RAP meeting is what kind of solar energy development is feasible in Virginia.
- The recommendations that result from the deliberations of the RAP will ultimately go to David Paylor, Director of DEQ, for approval. Normally, a regulatory action goes to one of the Citizen Boards for approval. In this case the statute provides that the Permit-by-Rule goes to the Director of DEQ for approval. A great deal of energy and resources have been authorized by the Director to make the Renewable Energy Permit-by-Rule development process work.
- DEQ's enabling legislation moves the environmental protection piece of the law, which would be normally handled through an environmental impact review process through the State Corporation Commission, to DEQ through a Permit-by-Rule process for renewable energy projects.
- The desire of the administration is to make Virginia the Energy Capital of the East Coast.
- DGIF and DHR have been key players in the development of the Permit-by-Rule requirements for the development of Wind Energy Projects, because DEQ's statute specifically references the issues falling under their jurisdiction, i.e., wildlife and historic resources.

Agenda Item: Welcome & Project Vision – David Paylor, DEQ Director

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David Paylor, Director of DEQ welcomed all of the RAP members to the meeting and thanked them for their willingness to serve on the RAP. He noted the following:

- Renewable energy is a process that we want to incentivize in Virginia.
- The existing SCC process for renewable energy projects over 5 MW led to some uncertainty for the applicant.
- The idea is that we need to create some certainty and timeliness for the environmental component of renewable energy projects.
- The Natural Resources that are identified in the statute that require protection, Wildlife and Historic Resources, are not areas that normally fall under DEQ's purview and therefore require input from other Natural Resource agencies -- DGIF, DHR, and our other sister agencies.
- The two goals of this effort are to: 1) create certainty for the business community and 2) to do what needs to be done to protect natural resources.
- The Permit-by-Rule developed for Wind Energy does a great job in meeting these two goals for that renewable energy source. Solar Energy is the next renewable energy source being evaluated for the development of an appropriate Permit-By-Rule.
- The Governor wants Virginia to be the Energy Capital of the East.
- DEQ has always been in a position of trying to solve problems for businesses and business development while protecting natural resources. The Economic environment is a priority of the Governor, and DEQ is trying to increasing its efforts in this area. Chief Deputy Rick Weeks is now spearheading the economic development aspects of DEQ's operations.
- Environmental rules and requirements may be criticized as barriers to economic development if there is a lack of adequate planning up front in the permitting process. The RAP can be an excellent planning resource.

Agenda Item: Virginia's Energy Policies – Maureen Matsen, Deputy Secretary of Natural Resources and Senior Advisor for Energy to the Governor

Maureen Matsen, Deputy Secretary of Natural Resources and Senior Advisor for Energy to the Governor made the following comments:

- DEQ has done a great job in getting all of the right people together in the right place to address the issues of renewable energy project permitting.
- We are looking at an energy capacity shortfall in the future.
- We need to protect the supply of renewable power at a reasonable cost.
- We need to rely less on out-of-state and more on in-state generation of power.
- Need to expand in-state generation.
- There is no "silver bullet" solution to our energy needs; our efforts have to include consideration of all sources of energy.
- Need to look at diverse sources, including: coal, gas, nuclear, biomass, wind, solar, in addition to conservation and efficiency, to meet our future energy needs.
- Need to remove obstacles to business development and spur economic growth while still providing protection to our natural resources.
- This work is critical.
- The Permit-by-Rule is the right tool for the renewable energy business.

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- This RAP's work is a very important part of the Governor's goal of making Virginia the Energy Capital of the East Coast.

Agenda Item: Overview of Solar Issues – Scott Sklar, The Stella Group

Scott Sklar, President of the Stella Group, Ltd. provided an overview of solar issues (a Solar 101) to the members of the RAP. He noted the following:

- He does not represent any specific company or technology. He is not coming here today with any pre-agreed notion as to the preferred technology but is here to provide an overview of the various technologies that are currently available.
- He requested that members of the RAP contact him directly via email for any questions that they may have on various technologies or approaches.
- The field of solar energy is growing.
- Technology evolves. Technology has to evolve; it does not remain stagnant.
- Renewable energy is a small part of overall energy generation, but still represents ¼ of all new production. No one technology stands out or aspect of renewable energy stands out, it is more of a blend of technology.
- The rest of the world is not sitting around waiting on the US; they are moving ahead.
- 32 Peer-reviewed studies in the last 28 months have looked at the question of whether we could meet our energy needs through the use of renewable energy technologies. Though it currently would not be cost-effective, the studies found that we could meet our needs using existing technologies or a blend of technologies.
- The long sought after "silver bullet" may in fact be a "silver buckshot." It will take a blend of technologies to meet our needs.
- Water availability is going down, not up. 47% of surface water is for energy production, while 42% is used for food production. Water demand is growing not decreasing.
- Based on various peer-reviewed literature, 36 states could be self-reliant on in-state renewable energy; Virginia could meet 177% of its energy needs through renewable technologies; 32 states can be self-sufficient.
- There is a lot of solar energy in Virginia, in fact more than in Germany, which is currently ranked number 1 in front of Italy; Japan and the US in solar energy capacity.
- Solar is local. There is a need for accurate mapping to determine the best sites for siting solar energy projects.
- One of the problems that we will be facing in the future is that of an aging "electricity distribution grid." It is aging and outdated. We currently import the majority of our transformers and there is a current backlog on orders. We need to move into "smarter grids." We have the technology, but it would require a giant investment.
- Solar is very predictable. We need solar to grow things. Solar is viable.
- Need to focus on bringing generation closer to the site of use.
- Concentrated solar/thermal is not feasible in Virginia. Needs a nonhumid climate to be efficient.
- Wind blows mostly at night, while of course solar is available during the daylight hours. What is needed is a combination or blend of technologies with some form of storage for those times when either wind or solar is not available.
- Photovoltaics are still a young industry, but could provide the needed energy during the prime energy use period in the middle of the day.

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- Mid-day energy usage creates congestion in the power lines, which makes the energy used then very costly and unreliable.
- There are energy losses all along the transmission systems. There are losses at each step in the process. The initial calculation has to take these losses into consideration so that the desired amount of energy is available for use at the end-user.
- Solar photovoltaics have a good potential for use on parking lots and on rooftops in Virginia.
- Solar photovoltaics systems normally have no moving parts, there are no emissions, and they are fundamentally low maintenance.
- Recycling guidance would be needed for damaged photovoltaic panels, but they could be a part of an existing recycling program.
- A number of examples of photovoltaic technologies were distributed to the RAP members for their inspection.
- 42 states and DC have adopted a net metering policy: if you produce more than you use, you get a credit.
- 29 states have a mandatory renewable portfolio standard (RPS) while 5 have a RPS goal. Virginia has a RPS goal of 15% by 2025.
- There needs to be a public path for technology for businesses/manufacturers to move into Virginia.
- Battery packs for photovoltaic solar energy storage should be located as close as possible to the generation point.

Agenda Item: Panel Discussion: What Will Solar Development in Virginia Look Like? (Panel Members: Emil Avram, Dominion; John Hart, AEC Idom; Jeff Ryan, Solar Services; John Daniel, Troutman Sanders/Invenergy; Scott Sklar, The Stella Group)

Discussion Facilitator: Carol Wampler

Panel Members Statements: Panel members presented their views on what solar development in Virginia would look like. Their comments included the following:

Utility representative:

- There are likely three levels of generation that are feasible: 1) Utility scale; 2) Distributed Generator Level (building rooftops – commercial/industrial rooftops) and 3) Smaller scale – residential rooftop or distributed generation.
- Photovoltaic is the most viable option for solar in Virginia now.
 - Don't see a large scale solar/thermal facility as a current option in Virginia.
 - The group needs to define the scope of what is excluded for consideration under the PBR rule. There may be a way to classify a project depending on how or whether it is integrated into existing buildings. If it is integrated into an existing structure, it should be exempt from the permit-by-rule requirements and treated more as a conditional use permit at the local government level, since it is likely to not have an impact on natural resources.
 - Distributed generation integrated with existing buildings or parking lots should be exempt from the permit-by-rule requirements. These projects are not likely to go above 5 MW. Under current law, if it goes above 5MW it would have to go through the existing SCC process.
 - There are not a lot of rooftops that could accommodate more than 5 MW.
 - How much land area is de minimis? Are there any existing land use triggers related to size of a project and regulatory requirements?

Dominion is currently working on a project involving the use of photovoltaic with the guideline of 8 to 10 acres per MW. They are looking at 40 to 50 acres of land to accommodate a 4 MW photovoltaic project.

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Depending on the timing of the project and the progress of the development of this permit-by-rule, they may take the project through the SCC approval process.

Various Comments from Other Participants:

- The solar resource in Virginia is dependent on cloud cover and cloud patterns. West of Richmond is not generally as good as East and South. Norfolk is a likely location.
- A site for a solar energy project needs to be as flat as possible. As flat as Kansas. Locations with 20 to 30 foot elevation changes are not good for a solar project.
- Pure concentrated solar thermal does not pencil out as a good option for Virginia. It is economically not feasible.
- Power towers need clear sunlight so they are not an option for Virginia. Any project using this type of technology might require a viewshed study similar to that devised for the wind energy permit-by-rule. A facility above a certain height might require a viewshed study.
- A solar energy project that is part of the urban landscape, i.e., as a rooftop or parking lot renovation or addition, should be exempt from the requirements for a permit-by-rule.
- Solar chimneys won't work in Virginia.
- Non-commercial exotics would not likely work in Virginia.
- The moderator noted that all regulations are required to be examined approximately every 5 years. Under the APA there are a number of ways to request a rule making. When there are other technologies that become feasible in Virginia, then a request for a rule making can be made. It was noted that there is a process in place to initiate a new rulemaking but one has to occur no later than every 5 years.
- It was suggested that there should be a trigger in the regulation (permit-by-rule) that would automatically trigger a new rulemaking to incorporate the use of a feasible new technology. There should be a reference in regulations to accommodate the development of new technology.
- The focus of the permit-by-rule should be on a utility scale.
- Land usage should be one of the parameters.
- One participant suggested that the land be restored to its original state if the solar project ceases to operate. After 24 to 40 years the technology may change that would make the current use of the site obsolete. However, the moderator noted that DEQ's PBR statute does not give DEQ authority over decommissioning.
- Tracking systems may not be economically viable in VA (require a great deal of maintenance and need more land available to be functional) and solar thermal does not appear plausible in VA.
- It was suggested that a state grant program would increase use of solar technology in Virginia.
- Another participant strongly recommended that building uses and parking lot systems should be exempt from the requirements of the permit-by-rule – they are covered by local building permits.
- There should be some kind of acreage trigger or starting point for utility-scale systems. Generally a larger scale system would have greater potential for impacts to natural resources.
- Each local government should address the issue of reversion of a property back to its original conditions. It was suggested that this could be addressed with language in the permit-by-rule to the extent that local governments set decommissioning rules. This issue could be covered by the requirement in the statute that the applicant shows evidence of compliance with all local ordinances and evidence of all local approvals.
- The moderator noted that DEQ's authority to address renewable energy comes only from the statute. Resource issues noted in the statute normally come under the authority of sister agencies. DEQ doesn't normally address energy issues but, because of the statutory changes, it now does. DEQ's permitting program will address the construction and operation of a project. Advice from the

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OAG last year clarified that the authority for DEQ to address siting and decommissioning of a project is not provided in the statute. Siting and decommissioning of a project are traditionally a local government issue and concern. DEQ by statute deals with the construction and operation of a project. The statute requires sign-off by local government. Local governments deal with land-use requirements.

- At this time there are no water-based (offshore) solar projects. Salt water and photovoltaic panels would not mix well.
- The involvement of local government in this process is important. DEQ has the opportunity to encourage the use of some kind of model ordinance to help address any siting and decommissioning issues.

ACTION ITEM: Robert Meyer stated that Northampton County Planning Commission has developed a draft Solar Energy District to address rezoning of properties for solar energy project use and to address reversion of the properties back to their original state. He will send a copy of the draft ordinance to Carol Wampler for distribution to the RAP members.

Further individual comments related to the panel discussion:

- It was suggested that the requirements outlined in the Solar Energy Permit-by-Rule should be consistent where possible with those presented in the Wind Energy Permit-by-Rule. Projects involving 5 MW or less should be exempt. Need to stay consistent with our approaches to renewable energy projects.
- Would a subdivision with multiple solar energy panels on multiple houses or the entire subdivision be considered a collection of a number of separate projects, or would it be considered collectively as a single project? How would the idea of a de minimis threshold be addressed in this scenario?
- Need to be open-minded regarding the types of possible projects. Need to anticipate single projects as well as cumulative projects.
- Should not categorically exclude rooftop projects.
- The moderator noted that a key concept in the original RAP (Wind RAP) is that siting is different than permitting. Siting is whether you can put the project in a certain locality or location. Once an applicant has permission to site a project in a particular location, then the permit program can tell him how the project should be constructed and operated. Now with the local approvals in place, how do you go about constructing and operating the project (the permitting phase)? Permitting is how you can do a project once you have permission to use the site. A permitting program allows people to do things if they meet certain conditions.
- The position of a meeting facilitator is one of neutrality, but they have to be an advocate for the statute to make sure that the requirements of the statute are met.
- Shouldn't allow an applicant to string together a number of smaller projects (which fall under the de minimis threshold) to create a larger one.
- What would constitute significant impacts for a solar energy project?
- It was noted that the definition of a facility may not be the same for the solar energy permit-by-rule as it was for the Wind Energy PBR. The RAP will address this question.
- It was noted that once a project meets local requirements, which may or may not include historic resource protection (dependent on whether a locality has a historic district or not), and has local sign off, then an applicant has to do what our permit requirements state for historic-resource protection..

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- It was noted that the statute clearly states that to be an approvable project that it has to have applied for and received all other required environmental permits. Our statute does not abrogate other federal, state, or local requirements.
- It was suggested that the permit-by-rule should possibly provide a cross-reference of those applicable federal and local regulations and requirements.
- What are the potential impacts on wildlife of the currently available solar energy technologies? Are there possible impacts from increased light reflectivity or solar thermal changes? It was noted that the problem was trying to identify the types of technology that might be used in Virginia to be able to narrow the search parameters to properly answer that question. If the focus is currently only on the use of photovoltaics, then we may be able to properly research the possible impacts. It is possible that other technologies that may become feasible in the future may or may not raise questions regarding natural resource impacts.
- How would we be able to address other types of solar technology in the future if this RAP only includes photovoltaics in their discussions?
- How do we address a project that is incorporated as part of a traditional generating facility that uses another source of energy, i.e., a coal fired generating facility? It was noted that such a project is addressed in other statutes..

STATUTE REFERENCE: §10.1-1197.5. Definitions: *"As used in this article, "small renewable energy project" means (i) an electrical generation facility with a rated capacity not exceeding 100 megawatts that generates electricity **only** from sunlight..."*

- It was noted that in this statute reference that the word "only" may be critical to our discussions. We are dealing with facilities/projects that generate electricity only from sunlight. Integrated systems would likely fall under other regulation requirements.
- It was noted that DEQ is looking to the expertise represented by the panel members to help identify what types of projects are feasible in Virginia and what provisions need to be incorporated into the Solar Permit-by-Rule to address those types of projects. It was suggested that stand-alone concentrated solar thermal project is not feasible for Virginia.
- How will changes/advances in technology be reviewed for needed changes to the permit requirements?
- It was suggested that the RAP should tackle the photovoltaic technology as the "solar energy" option that is currently feasible in Virginia and see where the discussions go and see how the requirements for that type of project might fit into other technologies at a later date – probably after discussion of photovoltaics is at or near an end.
- The issues identified in the Solar Energy PBR to address historic resource concerns and issues for projects over the de minimis level may be very similar to those identified in the Wind Energy PBR.

ACTION ITEM: Based on today's discussions, the RAP agreed that the major focus of the RAP for this permit-by-rule will be on photovoltaic technology, since everyone agrees that photovoltaics are feasible in Virginia. Consideration of other technologies (that appear not to be feasible) will be held in abeyance and re-visited later in the Solar RAP's deliberations.

ACTION ITEM: Members of the RAP to send copies of any peer-reviewed studies demonstrating what types of solar energy technologies are feasible in Virginia. Need to know enough about the available and feasible technologies to see if they fall under DEQ's statutory authority and, if so, what potential threats to natural resources that the technologies might present. Do they fall under the DEQ umbrella or are they the purview of the SCC?

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- It was noted that the definition developed for a wind energy project/facility will probably not take us where we need to go for a solar energy project/facility definition.
- It was noted that the statute clearly identifies two goals: 1) to promote the use of renewable energy and 2) to protect the Commonwealth's natural resources.

STATUTE REFERENCE: §10.1.1197.6.A Permit by rule for small renewable energy projects. "...the Department shall develop...a permit by rule...for the construction and operation of small renewable energy projects, including such conditions and standards necessary to protect the Commonwealth's natural resources."

Agenda Item: Guidelines and Procedures: Cindy Berndt, Director, DEQ Office of Regulatory Affairs

Cindy Berndt, Director of DEQ's Office of Regulatory Affairs, provided an overview of the APA and FOIA process and requirements. She noted the following:

- The RAP is a "public body" under the Freedom of Information Act (FOIA).
- Records must be kept and business is to be conducted in "open" public meetings. DEQ will handle all of the record keeping and meeting scheduling and notification requirements. DEQ is the custodian of the records.
- Emails are a cross between letters and phone calls and can create some controversy. She stressed that when you receive an email from Carol Wampler (RAP Facilitator and Ex-officio Member of the RAP) NEVER hit "Reply to All." That action may cross the line and be viewed as conducting a meeting. You should reply to Carol only. If you wish to share information or documents with the RAP, send them to Carol and she can distribute the materials or email information to the rest of the RAP, as an Ex-officio member of the RAP.
- This is a full process regulation, which normally takes a minimum of 2 years from issuance of Notice of Intent to a proposed regulation.
- She asked that the members of the RAP participate in the process and reach consensus where possible. This group is advisory in nature, but we are looking to each of you for your expertise.
- We currently do not have an approved "Notice of Intent" document, but the required documentation has been submitted to the Administration for Approval.
- If you have a face-to-face, telephone, or email communication involving more than 2 RAP members AND you are discussing the business of the RAP, then you are having a "meeting," which should have been public noticed, etc. Please limit your communications about RAP issues to only 2 RAP members. If communication is needed among a larger group, then ask Carol and we will look into properly setting up a public meeting for that purpose.
- REMEMBER: DO NOT HIT "REPLY-TO-ALL" ON AN EMAIL!
- When you discuss the business of the RAP, remember NO MORE THAN 2 RAP MEMBERS can be involved.

Agenda Item: Permit-by-Rule Requirements: Carol Wampler, DEQ, RAP Facilitator and Ex-Officio RAP Member

Carol Wampler, DEQ, RAP Facilitator and Ex-Officio RAP Member continued reviewing several sections of the statute for this permit-by-rule (Chapter 808), including the following:

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STATUTE REFERENCE: §10.1-1197.6.A Permit by rule for small renewable energy projects. "...the Department shall develop...a permit by rule...for the construction and operation of small renewable energy projects, including such conditions and standards necessary to protect the Commonwealth's natural resources."

What is a permit by rule (PBR)? In the absence of Debra Miller, Carol addressed this topic with the RAP. A PBR is a streamlined permitting vehicle utilized by DEQ's Waste Division for solid waste facilities like transfer stations. It consists of a regulation that sets forth up front all the requirements that a permit applicant must meet. The applicant submits to DEQ a package of information and certifications, as required by the regulation. If the application package is complete, then the Waste Division notifies that applicant that he is covered by the permit by rule.

The renewable energy statute lists 14 requirements that every applicant must meet to be covered by this new PBR for renewable projects. They are referenced here:

STATUTE REFERENCE: § 10.1-1197.6.B "The conditions for issuance of the permit by rule for small renewable energy projects shall include:

1. A notice of intent...published in the Virginia Register...
2. A certification by the governing body of the locality or localities...that the project complies with all applicable land use ordinances;
3. Copies of interconnection studies undertaken...
4. A copy of the final interconnection agreement...
5. A certification signed by a professional engineer...that the maximum generation capacity of the small renewable energy project by (i) an electrical generation facility that generates electricity only from sunlight...does not exceed 100 megawatts...
6. An analysis of potential environmental impacts...on attainment of national ambient air quality standards;
7. Where relevant, an analysis of the beneficial and adverse impacts of the proposed project on natural resources. (Wildlife specifically referenced – the analysis not to exceed 12 months.)
8. If the Department determines that the information collected pursuant to subdivision B 7 indicates that significant adverse impacts to wildlife or historic resources are likely, the submission of a mitigation plan detailing reasonable actions taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions;
9. A certification signed by a professional engineer...that the...project is designed in accordance with all of the standards that are established in the regulations applicable to the permit by rule;
10. An operating plan...
11. A detailed site plan...
12. A certification...that the...project has applied for or obtained all necessary environmental permits;
13. A requirement that the applicant hold a public meeting...
14. A 30-day public review and comment period prior to authorization of the project."

STATUTE REFERENCE: § 10.1-1197.7.A Review and authorization of projects. "Upon submission of a complete application, the Department, after consultation with other agencies in the Secretariat of Natural Resources before authorizing the project, shall conduct an assessment of whether the applications meet the requirements of the applicable permit by rule regulations..."

Note: This statutory provision varies from the Waste Division's PBR because a complete application does not automatically result in permit coverage. Rather, DEQ must consult with other SNR agencies before determining whether the complete application is sufficient to meet PBR requirements.

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STATUTE REFERENCE: § 56-580. Transmission and distribution of electric energy. *"D...Small renewable energy projects as defined in § 10.1-1197.5 are in the public interest and in determining whether to approve such project, the Commission shall liberally construe the provisions of this title."*

Although this provision is directed at the SCC, it clearly articulates the General Assembly's determination that renewable energy projects are to be favored.

Discussion - RAP Members: Items discussed by the RAP included the following:

- How do we address the issue of habitat in the permit-by-rule? The statute specifically narrows the scope of protection of natural resources to "wildlife" and "historic resources." It was the advice of OAG counsel during the original Wind RAP's deliberations that habitat is not "wildlife" and therefore cannot be a trigger for DEQ's requiring a mitigation plan. It is possible, however, for an applicant to propose protecting habitat (e.g., natural heritage resource area) as a way to mitigate for/offset impacts of the proposed project on wildlife.
- It was also stated that the statute provides authority to prescribe mitigation for wildlife but not habitat/flora. The proposed wind PBR requires the applicant to analyze a number of resource issues, including flora, but requires mitigation only for wildlife and historic resources.

ACTION ITEM: RAP Members are asked to review the language of the proposed Wind Energy Permit by Rule to see if any of the same requirements and wording could be applied to the Solar Energy Permit by Rule.

- It was noted that except for isolated cases, DEQ's sister agencies for the most part are not regulatory but are more advisory in nature. (Exceptions: DCR for non-point source pollution, DGIF and VDACS for threatened and endangered, and VMRC for activities affecting state-owned bottomlands.) Their otherwise advisory authority may be elevated to regulatory status by means of DEQ's PBR, or by an order of the SCC.
- The moderator requested the jurisdictional agencies to prepare strawman proposals to begin discussing at the next meeting.

Agenda Item: Next Meeting

Carol Wampler noted that the next meeting will take time out of the RAP agenda to include a discussion of "What can we do to encourage Solar Development in Virginia?" We welcome written suggestions, but will also go around the table at the next meeting to get any ideas and suggestions that the RAP may have. Graduate intern Jennifer Perkins will compile these suggestions into a report. We will also begin discussing specific provisions that may be appropriate for a solar PBR.

She thanked all of the RAP members for their participation in today's meeting.

The next meeting of the Solar RAP will take place on July 20th.

Meeting adjourned at approximately 4:10 PM.